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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1901.

THE KNIGHTS TEMPLARS & MASONS LIFE INDEMNITY COMPANY,
PETITIONER,
vs.
ROSA B. JARMAN,
RESPONDENT.
No. 254.

STATEMENT, BRIEF AND ARGUMENT FOR RESPONDENT.

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STATEMENT OF CASE.

This was an action brought by respondent to recover $5,000 upon a policy of insurance, issued by petitioner upon the life of John P. Jarman, and dated October 24, 1885. The suit was originally brought in the Circuit Court of Grundy County, Missouri, and removed by petitioner into the Circuit Court of the United States for the Western District of Missouri. The case was tried upon

an agreed statement of facts (Trans., p. 4), whereupon judgment was rendered in favor of respondent, and against petitioner, for $6,013.30 and costs. A writ of error was sued out by the company to the Circuit Court of Appeals for the Eighth Circuit, where the judgment of the lower court was affirmed, one Judge dissenting. Whereupon a petition for a writ of certiorari was, by the company, presented to this court, and granted, and the proceedings of the Circuit Court of Appeals are now here for review.

The policy sued on was issued to John P. Jarman, husband of respondent, and, through a local agent of the company, delivered to him at Trenton, Missouri, where he resided at the time. The policy, among other conditions and limitations, provides as follows (Trans., p. 14):—

> "In case of the *self-destruction* of the holder of this policy, whether voluntary or involuntary, sane or insane, * * * then in each and every of the foregoing cases, this policy shall become null and void, and the widow and heirs, or devisees, of said member shall have no claim for benefits on this company. Provided, that in case of the *suicide* of the holder of this policy, then this company will pay to his widow and heirs, or devisees, such an amount on his policy as the member shall pay to this company on the policy in assessments on the same, without interest."

The policy specified the amount to be paid as

> "the sum of $5,000, and all the money paid on the policy in assessments, subject to the limitations as to the amount of such payment as is provided in section 1, of article 7, of the constitution on the back of this policy."

Article 7, section 1, of the constitution referred to in the policy and printed on the back thereof (Trans., p. 18) is as follows: —

"Section 1. Upon due notice and satisfactory proof of the death of a member of this company, the board of directors shall within sixty (60) days pay the widow, children, or heirs of the deceased member (and in the order named, unless otherwise ordered by the member during his lifetime or in his will), the amount set forth in the deceased member's policy of membership; *Provided, that a policy of membership for $5,000 shall be good for all the money in the death fund arising from one assessment; provided it shall not exceed $5,000 and all the money paid on the policy in assessments; and a certificate for $4,000 shall be good for four-fifths of all the money in the death fund arising from one assessment, provided it shall not exceed $4,000 and all the money paid on the policy in assessments; and so on in the same proportion as to all certificates.*"

The application, which under the contract formed a part thereof, stipulates as follows: —

"I further agree, if accepted, to abide by the constitution, rules and regulations of the company, as they are now or may be constitutionally changed hereafter."

The by-laws, or constitution, which was printed on the back of the policy, provided in section 1 of article 4 (Trans., p. 16), that when an applicant has been accepted the Board of Directors shall make over to him,

"a policy of membership, *stating the terms and conditions of the contract between the parties, which policy* shall be sufficient evidence of his membership at the time it was issued *and shall constitute the basis of settlement with the beneficiaries.*"

In January, 1889, the company amended section 1, article 7, of the constitution, so as to provide that only the

assessments for the first five years should be returned to the beneficiary in case of death, but afterwards, January 14th, 1894, the company further amended the section by striking out the proviso, printed in italics, *supra*, so that the section read as follows: —

> "Section 1. Upon due notice and satisfactory proof of the death of a member of this company, the board of directors shall, within sixty (60) days pay the widow, children or heirs of the deceased member (and in the order named, unless otherwise ordered by the member during his lifetime or in his will), the amount set forth in the deceased member's policy of membership."

Paragraph 7 of the agreed statement of facts is as follows: —

> "Seventh. That John P. Jarman, while insane to such an extent as to be incapable of understanding the nature or consequences of his act, took his own life, and came to his death on the 12th day of September, 1898, by a gunshot wound, inflicted by himself. It is not contended, however, by plaintiff, that said self-destruction was the result of accident."

Petitioner claimed that on this agreed statement of facts respondent was only entitled to recover the amount of assessments paid by the insured, John P. Jarman, because he was guilty of self-destruction.

The second defense was that, because of the above amendment of the constitution in 1894, respondent, if entitled to recover in spite of the provision as to suicide, was only entitled to recover $5,000, the face of the policy, and not in addition thereto the assessments that had been paid.

To this first contention of the company respondent answered that at the time of the issue of the policy

in question the petitioner company was a regular life insurance company and hence was subject to the provisions of Section 5855 of the Revised Statutes of Missouri of 1889, which was Section 5982 of the Revised Statutes of 1879, which section of the statutes entered into and became a part of the contract, and, inasmuch as it was not contended that John P. Jarman contemplated suicide at the time of the issue of the policy, the company was precluded from its defense of suicide. Moreover, that, legally speaking, Jarman did not commit suicide, either in a technical or a popular sense, but, under the language of the agreed statement of facts, died from disease.

As to the second contention the respondent claimed that, inasmuch as the policy fixed the amount to be recovered, the company had no right by an amendment of its constitution or by-laws, to reduce the amount of the policy. She also claimed that it does not appear from the amendment of the by-laws, nor the agreed statement of facts, that the amendment of the constitution had, or was intended to have, any retrospective effect or took away the right to recover the assessments, or was intended to do so, or had anything more than a prospective operation, applying to policies issued after the amendment was made, because the constitution as amended still provided that settlement with the beneficiaries should be made *upon the basis of the policy*.

It was sought by petitioner to avoid the force of the suicide statute by the claim that, by the act of the Legislature of Missouri of 1887, recognizing the business of life insurance upon the assessment plan and exempting such companies from the insurance laws of the State, the suicide statute was repealed so far as this contract was concerned. It further contended that the words in the statute, "committed suicide," only referred to a felonious suicide, and that the defense interposed in this case was not the

defense of suicide within the meaning of the statute, which therefore was not applicable. It was further contended that although the Legislature in 1897 repealed the exemption of assessment companies made in 1887, such law of 1897 was void, because constitutional requirements as to its method of enactment were not complied with.

The Circuit Court rendered judgment in favor of plaintiff, holding against petitioner on all its contentions, which judgment was affirmed by the Circuit Court of Appeals, or a majority of the judges thereof.

BRIEF AND ARGUMENT.

I.

The policy sued on was issued subject to the laws of the State of Missouri in force at the time of its issue, which entered into and formed a part of the contract, and hence the provision that the policy should be void in case of the suicide of the member was itself void.

Petitioner, defendant below, is a life insurance company, and the contract sued on is a policy of life insurance. Unless the laws of the State in which the policy is issued make some distinction between different classes of insurance companies or their contracts, all are equally subject to the insurance laws of the State and it is immaterial what kind of a company it is. In the policy sued on the company agreed, for a certain consideration, to pay a specified amount upon the happening of the event insured against, namely, the death of John P. Jarman. Under the recognized definitions of insurance, this was a contract of life insurance, and, unless specially exempted from the insurance laws of the State of Missouri, where the policy was issued and delivered, it is governed by the laws of that State.

State ex rel. &c. *v.* Merchant's Exchange Benevolent Assn., 72 Mo. 146;
National Union *v.* Marlow, 4 U. S. App. 95; 21 C. C. A. 89; 74 Fed. Rep. 775;
Toomey *v.* Supreme Lodge Knights of Pythias, 147 Mo. 129–135.

The policy in question, having been issued in the State of Missouri, in October, 1895, and before the act of the

Legislature of Missouri of 1897, regulating the business of assessment insurance, was adopted, the laws of the State of Missouri relative to insurance, and especially Section 5982 of the Revised Statute of Missouri of 1879, known as the suicide statute, entered into and became part of the contract, and the policy was in all respects subject to it.

In the case of

New York Life Insurance Company *v.* Cravens, 178 U. S. 389,

affirming the case of Cravens *v.* New York Life Insurance Co., 148 Mo. 583, this court approved the declaration of the Supreme Court of Missouri, in which it said: —

> "Being a Missouri contract the statute then in force, with respect to the subject-matter of the contract, entered into and became a part thereof as much so as if copied therein."

In that decision, however, this court simply followed the rule previously laid down in the case of Equitable Life Assurance Co. *v.* Clements, 140 U. S. 226, where the court says: —

> "The statute is not directory only, or subject to be set aside by the company with the consent of the assured, but is mandatory and controls the nature and terms of the contract into which the company induces the assured to enter."

In the case of

White *v.* Ins. Co., 4th Dillon, 177,

Judge Dillon, speaking of certain provisions in life insurance policies, issued in Missouri after the enactment of Section 5849 Revised Statutes, 1889, said: —

"The Legislature of Missouri conceived, and we think, wisely, that the promises held forth to the assured in the policies in general use were too often a delusion and a snare, and as the courts were powerless to correct the evil, it ought to be corrected by statute. * * * We are of the opinion that policies issued and delivered in Missouri, after that act took effect, fall within its protective operation; and as to such policies the act is to be treated as if incorporated therein. * * * The general rule is that laws in existence are necessarily referred to in all contracts made under such laws, and that no contract can change the law."

In many cases, decided by the Supreme Court of Missouri, in addition to the one last cited, it has been held that the provisions of the insurance laws of the State enter into and form a part of the contract as completely as if written in it.

Havens *v.* Insurance Co., 123 Mo. 403–417;
Christian *v.* Insurance Co., 143 Mo. 460–465;
Horton *v.* New York Life Insurance Co., 151 Mo. 604.

It has also been held, in another suit involving the contracts of this same company issued prior to 1897, that its policies issued before the law of 1887, were governed by the suicide statute of Missouri.

Knights Templars & Masons Life Indemnity Co. *v.* Berry, 4 U. S. App. 353; 50 Fed. Rep. 511; 1 C. C. A. 56.

The suicide statute has been held to apply to all kinds of life insurance unless especially exempted by statute.

Toomey *v.* Sup. L. Knights of Pythias, 147 Mo. 129–137.

In a recent case decided by the Supreme Court of Missouri, Kern *v.* Supreme Council American Legion of Honor, 67 S. W. 252, the following language is used:

> "And the result is that when the certificate involved in this case was issued in 1895, foreign fraternal beneficial societies were not exempt from the operation of the laws of this State relative to life insurance, and only such fraternal societies as were organized under the laws of this State were so exempt. Secs. 5849 and 5850, R. S. 1889, are continuations of the Act of March 3rd, 1874, except the requirement of that Act that interest at six per cent per annum shall be deposited as well as the premiums, which has been omitted. That Act is general. It applies to all companies. If any company or society claims to have immunity from this provision, it must put its finger upon the law granting such immunity, otherwise the law applies. Since the defendant cannot point out such exemption that law applies to it."

Unless, therefore, defendant can show an exemption from the statute at the time the policy was issued, the contract is governed by the suicide law then in force, which entered into the contract as much as if written therein.

It follows, therefore, under the authorities cited, that all the cases and authorities cited by petitioner, to the effect that the laws of the State do not form a part of the contract, have no application, because in conflict with the decisions of the Supreme Court of Missouri construing a law of that State as well as with the decisions of this court.

II.

The true construction of the suicide statute is that it was intended to apply to all cases of suicide, felonious

or otherwise, and to forbid the defense of suicide as to policies issued in Missouri, except as therein provided. Any other construction of the statute would be absurd and make it meaningless.

The judges of the Circuit Court of Appeals, in construing this suicide statute, disagreed as to the construction of the words therein, "committed suicide," Judge Sanborn holding, as contended by petitioner, that the words "committed suicide" were used by the lawmakers in a technical sense and only referred to the deliberate suicidal act of a sane man, and it therefore is important to consider the proper construction to be placed upon the statute. This statute is given in full in many places in the record, and in the brief filed by petitioner, and in the opinion of the court below, so that it is not necessary to again restate it.

In the first place we contend that this statute must have a liberal construction, and should not be strictly construed as petitioner contends.

The clause of the policy, by which it is claimed to have been avoided, provides (Trans., p. 14) that the policy shall be void,

> "in case of the self-destruction of the holder of this policy, whether voluntary or involuntary, sane or insane."
>
> "Provided that in case of the *suicide* of the holder of this policy, then this company will pay to his widow and heirs or devisees such an amount on his policy as the member shall have paid to this company on this policy in assessments on the same without interest."

1. "*Self-destruction*" *and* "*suicide*" *are synonymous terms.* The words "self-destruction," "suicide," "take his own life," "commit suicide," and the other similar

terms used in policies of life insurance are synonymous, and mean the same thing.

This court has said in the case of Connecticut Mut. Life Ins. Co. *v.* Akens, 150 U. S. 468–475: —

> "It was argued that the word 'self-destruction' as here used was more comprehensive than suicide, and included an intentional, though insane killing of oneself. But the two words are treated as synonymous in the very clause in question as well as in the former opinions of this court. The act whether described by words of Saxon or Latin origin, or partly of the one and partly of the other, 'dying by his own hand,' 'self-killing,' 'self-slaughter,' 'suicide,' 'self-destruction,' without more cannot be imputed to a man who, by reason of insanity (as is commonly said) 'is not himself.'"

We may, therefore, not only on account of this decision, but also because the word "suicide" is used in the policy as meaning the same thing as "self-destruction," assume that the word in the policy, "self-destruction," and the word in the statute, "suicide," mean the same thing.

The Supreme Court of Missouri has so held.

Haynie *v.* Knights Templar, etc., 139 Mo. 431.

2. *There can be no suicide nor self-destruction without an intent.* Undoubtedly in construing this law the condition of affairs which led to its enactment must be considered. It is a part of legal history that insurance companies, in order to restrict and limit their liability, among numerous other conditions and exceptions stipulated that they should not be liable where the person insured committed suicide. In considering this defense the courts, beginning with the case of

Breasted *v.* Farmers &c. Co., 4th Hill, 73–75,

which was afterwards cited and approved by this court in the case of Manhattan Life Ins. Co. *v.* Broughton, 109 U. S. 121, held that a man could not commit suicide if insane, the act of suicide being predicated on an intent. The court said in the latter case :—

> "If a man's reason is so clouded or disturbed by insanity as to prevent his understanding the real nature of his act, as regards either its physical consequences or its moral aspect, the case appears to us to come within the forceful words uttered by the late Mr. Justice Nelson, when Chief Justice of New York, in the earliest American case upon the subject: 'Speaking legally also (and the policy should be subjected to this test), self-destruction by a fellow-being bereft of reason can with no more propriety be ascribed to his own hand than to the deadly instrument that may have been used for the purpose, and whether it was by drowning, poisoning or hanging, or in any other manner, was no more his act in the sense of the law, than if he had been impelled by irresistible physical power.' Breasted *v.* Farmers &c. Co., 4 Hill, 73–75."

Then the insurance companies, to avoid the effect of these decisions, inserted in their policies the provision that they should be void in case of "suicide, sane or insane, voluntary or involuntary," an absurd expression contradictory in terms. This clause was held to be effectual and to relieve the companies in all cases of suicide where the insured had the intent to take his own life even though such intention was that of an insane person, although this court has pointed out possible circumstances under which such a clause would be held of no effect.

In the case of Bigelow *v.* Insurance Co., 93 U. S. 284, this court cited with approval the case of Pierce *v.* Travelers Ins. Co., 34 Wis. 389, in which, in a case where the words of the policy provided that it should be void if the

insured "should die by suicide, felonious or otherwise, sane or insane," the court said: —

> "The condition here relieves the company from liability only when the self-destruction was intentional, or committed by a party who was conscious of the nature of the act he was committing, or about to commit, and conscious of its direct and immediate consequences, though the act may have been unaccompanied by any criminal, or felonious intent or purpose. *It does not apply or relieve the company, where the death of the assured was accidental, or may be properly be said to have been caused by accident, though brought about, it may be, by his own hands, or by some dangerous or destructive instrument held in them.*"

In one of the early Missouri cases the same view was taken.

Adkins *v.* Columbia Life Ins. Co., 70 Mo. 27–32.

3. *The intent of the statute was to prohibit the defense of suicide unless suicide was contemplated when the policy was taken out.* The meaning of the suicide statute might be aptly expressed as follows: "The defense of suicide or self-destruction in this State, as to policies hereafter issued, shall not be permitted, unless the insured intended at the time the policy was issued to take his own life, and any stipulation in the policy to the contrary shall be void."

In the first case decided after this statute went into effect,

Keller *v.* Travelers Ins. Co., 58 Mo. App. 557,

the court said: —

> "The plain purpose of the statute *supra* was to prevent the insertion in policies of life insurance of exceptions to liability on the ground of the suicide of

the insured, unless it could be proven 'that the insured contemplated suicide at the time he made the application for the policy.' This was in effect a legislative declaration of the public policy of this State. That it was intended to limit the power to contract for a lesser liability in cases of death by suicide, not within the limitation expressed in the statute, is also apparent from its terms, to wit: 'and any stipulation to the contrary shall be void.'"

And the Supreme Court of Missouri refers to the statute as meaning what we have said. In the case of

McDonald *v.* Life Assn., 154 Mo. 627,

the court said:—

"Measured by these rules this company, so far as the face of the contract shows, is not an assessment company, and hence Sec. 5855, Revised Statutes 1889, applies, and as the defendant has not attempted to show, as that section requires, when the defense of suicide is interposed, that the insured contemplated suicide when he applied for insurance, there has been no valid defense pleaded."

And again the court says:—

Logan *v.* Fidelity &c. Co., 146 Mo. 114–123.

"This section was not designed to limit the persons of a particular class of companies, as such by name, but its terms established a general rule, applicable to any company whose contracts insure against death, and which attempts to avoid liability in case of suicide, except those companies doing business on the assessment plan that were expressly exempted by reason of the provisions of section 5869 Revised Statutes 1889, of the Act authorizing such companies to be organized and prosecute business in this State,

and the force of that provision in favor of the assessment companies has been stricken down by an act of the legislature in 1897, so that the *defense of suicide* is now alike unavailing, etc. * * * If one holds *a general life policy* and an accident policy and is killed by lightning or *commits suicide*, so that he may be said to have died by accidental means, both the companies should pay and the stipulation against liability in the *event of suicide* in the policies should be no more a defense, etc."

We may also refer to the cases

Christian *v.* Conn. Mut. L. Ins. Co., 143 Mo. 460–466; and

Ins. Co. *v.* Florida, 32 U. S. App. 753.

In this connection we may well refer to the words of Judge Campbell in the case of

John Hancock Life Ins. Co. *v.* Moore, 34 Mich. 42,

where he says: —

"Some stress is laid on the term, suicide, as if it means a wrongful act of self-murder. It has no such restricted meaning. It means self-killing just as homicide means killing any one else. But there may be excusable homicide as well as felonious, and suicide was only cognizable at law when the person was *felo de se*, or guilty of a felonious act. If *non compos mentis*, the actor in homicide, or suicide, commits no crime. * * * A construction which punishes a person who is not in fault is not to be favored if it can be allowed at all. The very object of life insurance is to provide for death by disease or in the ordinary course of nature. Death by his own hands or in the case of one not *compos* is as much the result of disease as death by fever or consumption. The act of an insane man is morally no more his act than if it were mechanical."

The legislature must be presumed to have had in view the condition of affairs at the time the statute was enacted and to have intended the statute to make void the condition of the policies of life insurance companies, providing that such policies should be void in case the insured took his own life "sane or insane, voluntarily or involuntarily."

Otherwise some new word must be discovered to express the act of insane self-destruction, or an unconscious and unintentional self-destruction, for the courts use the old term in a general sense as referring to both kinds. If the words of the statute have the limited meaning contended for, the people and the newspapers, as well as learned courts and jurists, have all labored under a misapprehension.

4. *The words of the statute, "committed suicide" are used in their popular sense.* That this construction is right and that it is also true that in the popular sense any act by which a person takes his own life is referred to as "committing suicide," is shown, not only by the personal experience of every man, but it appears also that the word was so used even by counsel in this case. Throughout the brief presented by petitioner to the court on the trial of this case in the lower court, they referred to the act of Jarman as his "committing suicide." Afterwards they were more careful as to the terms used.

Thus on page 3 of the brief filed by counsel for petitioner in the trial court, the substance of the seventh paragraph of the agreed statement of facts, is stated as follows: —

> "John P. Jarman *committed suicide* on September 12th, 1898, while he was insane."

On page 5 of the same brief counsel says: —

"The contract of membership between John P. Jarman and the defendant company provided that in case of his *self-destruction, or suicide*,"

the defendant would pay only the assessments, etc.

And on page 6 of the same brief counsel says, in stating the points involved in the case: —

"Within the past five years the defendant company has had two cases litigated in Missouri upon policies *where the members committed suicide*. Both policies were issued *after* the passage of the assessment law of Missouri noted above. It was held that the proviso in section 5869 relieved the defendant company from the operation of section 5855 referring to *suicide*. This was in effect deciding that as to assessment companies section 5855 was repealed by the law of 1887. The question arises in this case, did such repeal relieve the defendant company from section 5855, referring to *suicide*, committed by a member whose policy was issued prior to the passage of the law of 1887? The contention of the defendant company is that after assessment companies were relieved of the operation of section 5855 by the law of 1887, which provided that such companies should not be subject to any provisions of the general insurance laws, except section 6013, referring to service of process, section 5855, being merely a declaration of the public policy of Missouri with reference to suicide, could not be invoked in any suit upon the policy of a member *who committed suicide* after this time and consequently, that the condition against *suicide* will defeat any recovery by the plaintiff, except the amount agreed to be paid in case of *suicide*, viz.: the amount paid in assessments by the member.

"If the contention of the defendant on the first point of law is maintained, the whole controversy will be settled, and the defendant will pay to the plaintiff all the money paid in assessments by the member; on the other hand, if it is held by the court that, as a matter of law, the *defense of suicide* cannot be pleaded

by the defendant, the question arises whether or not the beneficiary is entitled to recover with the face of the policy either all the money paid upon the policy in 'assessments' or all the money paid upon the policy in assessments during the first five years; in other words, whether or not the certificate, the constitution or by-laws, and the application, constituting the contract in question, are affected by the changes which have been made in the constitution."

On page 19 of the same brief counsel say: —

"In the Berry case (referring to the case, Knight Templars, etc., *v.* Berry, 4 U. S. App. 353; 50 Fed. Rep. 511), the suit was brought on a policy issued in 1885 by the same company to another resident of Trenton, Missouri, who also *committed suicide*."

The policy itself refers to "suicide" as equivalent to self-destruction, sane or insane, etc.

In spite of dictionary definitions and the power of logic, every one knows that in the public press, in the opinions of the courts and every-day life the term, "commit suicide," is used generally to express any act of self-destruction whether intentional or unintentional, whether felonious or the result of disease. If the contention of counsel for petitioner is right all the opinions in suicide cases must be revised and more accurate phraseology used, for the courts have all fallen into most lamentable error because they have spoken of the act in a common-sense way instead of with technical and logical accuracy.

The suicide question is an old one, and even in the time of Hamlet the grave-diggers realized its difficulties when discussing the act of Ophelia.

"*First Clo.* Is she to be buried in Christian burial that willfully seeks her own salvation?

Second Clo. I tell thee she is; and therefore make her grave straight: the crowner hath sat on her, and finds it Christian burial.

First Clo. How can that be unless she drowned herself in her own defense?

Second Clo. Why, 'tis found so.

First Clo. It must be 'se offendendo;' it cannot be else. For here lies the point: If I drown myself wittingly, it argues an act: and an act hath three branches; it is, to act, to do, and to perform: argal, she drowned herself wittingly.

Second Clo. Nay, but hear you, goodman delver, —

First Clo. Give me leave. Here lies the water; good: there stands the man: good: if the man go to this water, and drown himself, it is, will be, nill be, he goes, — mark you that; but if the water come to him and drown him, he drowns not himself: argal, he that is not guilty of his own death shortens not his own life.

Second Clo. But is this law?

First Clo. Ay, marry is't; crowner's quest law."

The subtleties of logic, as pictured by Shakespeare, as well as by Holmes, in "The One Hoss Shay," sometimes are most amazing and startling and lead to curious and unexpected conclusions.

5. *Any other construction of the statute would be absurd.* Any other construction of the statute would make it unmeaning. It has always been the law that the suicide of a sane person avoids the policy whether so stipulated therein or not.

Ritter *v.* Mutual Life Ins. Co., 169 U. S. 139.

As the opinion of the majority of the Court of Appeals in this case says: —

"It is said that by a long line of adjudications prior to the adoption of the Missouri Statute excluding the defense of suicide, it has been determined that the words 'commit suicide,' as used in insurance policies, meant a 'voluntary act when a person was in the possession of his ordinary reasoning faculties;' that the words 'commit suicide' are used in that sense in section 5855, and being so used that the statute is not broad enough to cover the present case because it is stipulated that Jarman took his own life 'while insane to such an extent as to be incapable of understanding the nature or consequences of his act.' A proper degree of respect for the legislature requires us to overrule this contention, since it is not probable that any legislative body in its right mind would declare that insurance companies shall not be allowed to make the defense of suicide if the insured takes his life when in the full possession of all his reasoning faculties, but may make it whenever it is claimed that he took his life while insane. In view of the many long and embarrassing trials that had taken place in actions upon insurance policies to determine the mental state of the deceased at the time he took his own life and the difficulty in many cases of determining that issue with any approach to accuracy, it was deemed best to exclude the defense of suicide altogether in such actions. The statute was doubtless prompted by that view and whether it be regarded as wise or unwise, it was competent for the Legislature to enact it and we have no doubt that the words commit suicide were used in a popular sense to comprehend the act of self-destruction without reference to the mental state of the actor."

III.

If the suicide statute entered into and formed a part of the contract, which it did, the subsequent adoption of the law of 1887, under which assessment companies were exempted from the operation of the insurance laws, did not affect Jarman's policy, because such law had no retrospective effect and did not in any way impair or repeal the statute, but simply created an exemption as to future contracts.

1. *The statute of 1887 had no retrospective operation because the State constitution forbade it.* When the company obtained permission to do business in Missouri on the assessment plan under the statute of 1887, its existing contracts were not affected, but it was authorized to insert the suicide clause in policies subsequently issued, because the statute had only prospective operation, and in no manner related to or affected policies already issued, because the suicide statute was a part of such policies, and the legislature had no intention of applying the new law to existing contracts and could not so apply it if it had wished.

The constitution of Missouri, article II, section 15, provides as follows: —

> "That no *ex post facto* law, nor law impairing the obligation of contracts, or retrospective in its operation,"

can be passed by the General Assembly.

In the case of

Hope Mutual Life Ins. Co. *v.* Flynn, 38 Mo. 483,

the Supreme Court of Missouri, citing Sedgwick on Construction of Statutes, Sec. 188, said: —

> "A statute which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already passed, is to be deemed retrospective or retroactive."

The same court in another case says: —

Barton Co. *v.* Walser, 47 Mo. 189–201.

> "As between individuals the Legislature has no power to interfere and declare an act or deed valid which was previously void. Therefore, when the Legislature undertook by an enactment to declare a deed legal and binding which was made by an insane person, it was decided by this court that the act was unconstitutional and of no effect. Routsang *v.* Wolf, 35 Mo. 174."

2. *Statutes are construed to operate prospectively only, even in the absence of such a constitutional prohibition.* It is not necessary to more than refer to the general rule that statutes will always be construed to operate prospectively, unless the contrary intent is clear.

This court in the case of

City Railway Company *v.* Citizens Railway Company, 166 U. S. 557,

has said: —

> "But it (the act of the legislature), certainly should not be construed to act retrospectively or to

affect contracts entered into prior to its passage unless its language is so clear as to admit of no other construction."

Bearing directly on this question is the case of

Voight *v.* Kersten, 164 Ill. 344; 45 N. E. R. 543,

where the court says: —

"It would seem that the construction of the act passed in June, 1893, giving it the effect to destroy that right of appointing a beneficiary, or naming another beneficiary, which existed in favor of the deceased under his contract prior to the passage of the act, would be to give the act a retrospective effect, and destroy the obligation of the contract entered into between the deceased and the complainant. It is a recognized rule in the construction of statutes that they should be so construed as to give them a prospective operation only, and they should be allowed to operate retrospectively only where the legislative intention to give them such operation is clear and undoubted."

See, also, Moore *v.* Chicago, &c., Society 178 Ill. 102; 52 N. E. R. 882.

3. *The suicide statute of Missouri has never been repealed.*

In the case of

Knights Templars & Masons etc. *v.* Berry, 4 U. S. App. 353; 50 Fed. Rep. 511; 1 C. C. A. 56,

which is cited in the opinion of the court below, Judge Shiras said: —

"Before this question can arise it must be made clear that the Legislature of the State intended to repeal by the act of 1887, the provisions of section 5982 (now section 5855), in its application to policies previously issued by companies doing business under the assessment plan; and in our judgment, the intention to repeal the section in this particular is not made clear. In the first place, the Legislature of Missouri has not repealed section 5982 (now section 5855), it is still the law of the State that companies engaged in the business of life insurance shall not be permitted to exempt themselves from liability for death by suicide not contemplated when the application for its insurance is made."

Moreover, the authorities clearly establish the fact that the suicide statute became a constituent part of the contract which it was beyond the power of the Legislature to alter or amend. The statute of 1887 was only an exempting statute, conferring upon the companies the right to avail themselves of certain privileges as to future contracts and in no way operated to repeal the former statute.

4. *The cases cited by counsel for petitioner have no application.* However, in this case it is not necessary to consider the intent of the exemption of the statute of 1887, because under the statute of Missouri it could not have a retrospective effect, because if it did, it would be unconstitutional.

Certain cases are cited in petitioner's brief where it has been held that statutes which have been passed validating certain contracts, or acts made or done in the past, which but for the curative effects of the statute would be void, are valid but that rule under the decisions of the Supreme Court of Missouri cannot govern here.

The case of

Satterlee *v.* Matthewson, 2 Peters, 380,

where the court said that all would admit the retrospective character of a statute if the effect was to create a contract where none had previously existed, supports our contention. For, if the suicide clause in the policy was void, and the effect of the statute of 1887 was to validate it, it would be injecting into the contract a provision which did not before exist, which it was held could not be done.

All the cases cited in support of the proposition that the effect of the law of 1887 was to revive the original contract, do not apply, because such law could not be retrospective, and moreover, there was never any repeal of the original suicide statute, which remains to-day a part of the laws of the State.

It is contended that the suicide statute applies only to the remedy, and is not a part of the contract, and that the statute of 1887, authorizing the business of assessment insurance, and exempting assessment insurance companies from the general insurance laws of the State, operated as a repeal of the suicide statute so far as these companies were concerned, thus, bringing the case under the principles of Ewell *v.* Daggs, 108 U. S. 142.

In the first place, the act of 1887, as we have shown, created an exemption as to future contracts, but did not in any way repeal the original law, taking away the defense of suicide, but left it in full force.

The facts in the case of Ewell *v.* Daggs were different. There the statute provided that if the contract reserved an unlawful interest, it should be void as to the interest and that whole law was wiped out by the new constitution.

As was said in the opinion of the court below: —

> "In Ewell *v.* Daggs a purely statutory defense existing under the usury laws of a State when a certain contract for the loan of money was entered into, was taken away by a subsequent constitutional amendment,

and it was held in substance, that such repeal did not impair the obligation of the contract. The court in that case regarded the usury law that had been repealed as in the nature of a penal statute inflicting a penalty upon the lender which any subsequent legislature could repeal and thereby remit the penalty."

The defense of suicide in this case is made under the terms of a clause of the contract, which, if void under the statute at the time it was made, was void for all time, and could not be revived or given life, even if the suicide statute was in fact afterwards repealed, which it was not.

Counsel for petitioner must concede that, under the constitution of Missouri, any law having a retrospective effect is invalid. Counsel must also concede that, under the definition of the Supreme Court of Missouri as to what a retrospective law is, to give any such effect to the statute of 1887, as is claimed, would be to give the law a retrospective effect, and counsel must certainly concede that the original suicide statute of Missouri remains, and has always remained since its first enactment, in full force.

The argument of counsel is based on the idea that the law of 1887 operated as a repeal of the former statute, which it did not. Therefore, we contend that the principles of Eweil *v.* Daggs do not apply to the facts in this case, and the law of 1887 had no effect upon this contract.

Counsel also cited the case of Rosenplanter *v.* Provident Savings Life Society, 96 Fed. Rep. 721, decided by the Circuit Court of Appeals for the Sixth Circuit.

In that case the defendant was a company issuing term insurance, which was only from year to year, and which expired by its terms at the end of the agreed period unless renewed, and it must be renewed every year in order to be valid. It follows that it was doubtful whether the law of New York in regard to giving notice of premiums applied to the contract, and if it did it did not apply to the con-

tract after the law was repealed so far as renewals and premiums which matured after the law in regard to notice had been repealed were concerned; hence we claim that the facts of that case were in no respect like those of this, and that the same principles are not involved in this case that were involved in that.

Of course as to policies subsequently issued by assessment companies after the law of 1887, there would be an exemption from the suicide law, because that was the intent of the statute, and it has been so expressly decided in,

Haynie *v.* Knights Templars & Masons Life Indemnity Co., 139 Mo. 416.

IV.

The exemption created by the law of 1887 was revoked by the act of 1897 which was regularly and constitutionally enacted.

In 1897, by an act of the Legislature, the law exempting insurance companies doing business on the assessment plan from certain provisions of the laws of the State of Missouri relating to defenses in actions in insurance policies was repealed, and such law went into effect before the death of Jarman. While we believe that it is immaterial whether the repealing act of 1897 was constitutionally passed or not, because Jarman's contract was made before the exempting statute was enacted, we contend that the act of 1897 was in all respects valid, and has always been so considered by the courts of Missouri and now forms a part of the Revised Statutes of Missouri of 1899.

1. *The title of the act of 1897 fully expresses its object*

The act of 1897 purported to repeal section 5869 of the Revised Statutes of 1889, and to adopt a new section in lieu thereof.

The only point made by counsel for petitioner is that the act of 1897 is unconstitutional because it does not conform with the requirements of the constitution of Missouri that "No bill shall * * * contain more than one subject, which shall be clearly expressed in its title."

The object of this provision is to prevent "log-rolling," and surprise and fraud on members.

State *v.* Miller, 45 Mo. 495–498.

> "The courts in all the States where a like or similar provision exists, have given it a very liberal interpretation, and have endeavored to construe it so as not to limit or cripple legislative enactments any further than what was necessary by the absolute requirements of the law. * * * It is sufficient that the title fairly embraces the subject-matter covered by the acts; mere matters of detail need not be stated in the title." State ex rel. Wolf *v.* Bronson, 115 Mo. 271, 276.
>
> "A mere reference to the section to be amended, without other description of the subject-matter of the amendatory law, is, under the ruling of this court, a sufficient title to an act which deals exclusively with the subject of the section amended." State ex rel. *v.* Heege, 135 Mo. 112, 118.

In the statement of the title of session acts 1897, 129, we find the following, *inter alia*, "An Act to repeal Section 5869 of Article 3 of Chapter 89 of the Revised Statutes of Missouri of 1889, entitled, etc."

Upon analysis it is disclosed that R. S. 1889, section 5869, deals with four, and only four, sub-topics relating to the law of insurance. What are they?

First, annual statement.

Second, visitation and examination by the superintendent of the insurance department.

Third, a statement of the law to which "such foreign companies" are subject and required to conform.

Fourth, a provision in regard to the relation of such companies to the general insurance laws of the State.

By no course of reasoning can we arrive at the conclusion that the amendatory section deals with any other than these four subjects. True, the amendatory section in making the statement of the law to which foreign companies are subject and required to conform, does not refer to the section of the statute to which the old section refers, and it refers to other sections, but, as we have already seen, "mere matters of detail need not be stated in the title."

State ex rel. *v.* Bronson, 115 Mo. 271, 276.

The only difference between the old section and the amendatory act, is in regard to the law to which "such foreign companies" are subject.

It will be readily seen that if the title must so minutely enter into details as to enumerate these differences, the declaratory clause of a statute would be only a repetition of the title. Since the amendatory act ('97–129) deals exclusively with the subject of the section amended, and makes specific reference to the section amended, the subject of the amendatory act is clearly expressed in its title.

> "The practice of legislation by reference to sections of the authorized version of the statutes (without other description of the subject of the amending act) has been followed quite generally in this State on the faith of early rulings of the Supreme Court approv-

ing such methods of law-making. So much has been done, and so many rights have been acquired, on the basis of those rulings, that we hold that the question of their correctness ought not to be re-opened at this day. We adhere to them and follow them as an expression of the settled law of Missouri."
The State ex rel. *v.* County Court, 128 Mo. 440.

2. *The Supreme Court of Missouri has held the act in question valid.* In the case of Toomey *v.* Supreme Lodge Knights of Pythias, 147 Mo. 129–137, the Supreme Court of Missouri sitting in banc, by an unanimous opinion, referring to the section of the statute in question and also to the law of 1897, said: —

"As to the first class, regular or old line (companies), Section 5855, Art. 2, Chap. 89, R. S. 1889, provided: 'In all suits upon policies of insurance on life hereafter issued by any company doing business in this State, it shall be no defense that the insured committed suicide, unless it shall be shown to the satisfaction of the court or jury trying the cause, that the insured contemplated suicide at the time he made his application for the policy, and any stipulation in the policy to the contrary shall be void.'

This provision, it has been held, applies only to the first class above specified and does not apply to the second class, assessment companies (Haynie *v.* Knight Templars & Masons' Life Indemnity Co., 139 Mo. 416) because they are organized under Art. 3, Chap. 89, R. S. 1889, and it does not apply to the third class fraternal beneficial associations — because by section 2823, Art. 10, Chap. 42, R. S. 1889, it is provided that, 'such fraternal beneficial societies shall not in any way be subject to the insurance laws of the State.'

Whether this discrepancy was designed, or was an oversight by the General Assembly, it is not the province of the courts to say, but it appears it was a mis-

take *for in 1897, the legislature extended the law to all classes of insurance* (Acts 1897, p. 129)."

The court also took the same view in Logan *v.* Fidelity, etc., Co., 146 Mo. 114.

V.

Under the definition of suicide and the principles laid down in the leading cases, it cannot be held under the seventh paragraph of the agreed statement of facts (Trans., p. 6), that John P. Jarman committed suicide, or was guilty of self-destruction, because he had no intent to take his own life nor did he know that his act would cause death, but his death was the result of disease.

Suicide is an affirmative defense and the burden of proof is on the defendant to show it. Unless it clearly appears from the agreed statement of facts that Jarman was guilty of self-destruction then the death does not come within the exceptions of the policy.

1. *Jarman had no intent to take his own life, nor did he know what he was doing.* The gist of the defense of suicide or self-destruction is the intent, and if there was no intent, Jarman did not in a legal sense take his own life.

Leman *v.* Manhattan Life Insurance Co., 46 La. Ann. 1189; 15 So. R. 388;

Conn. Mut. Life Ins. Co. *v.* McWhirter, 44 U. S. App. 492; 73 Fed. Rep. 444–450;

Travelers Life Ins. Co. *v.* Nitterhouse, 11 Ind. App. 155; 38 N. E. R. 1110;

Hale *v.* Life, etc., Indemnity Co., 61 Minn. 516; 63 N. W. R. 1108;
Edwards *v.* Travelers Ins. Co., 20 Fed. Rep. 661.

The agreed statement of facts, section 7, is: —

> "John P. Jarman, while insane to such an extent as to be *incapable of understanding the nature or the consequences of his act*, took his own life, and came to his death on the 12th day of September, 1898, by a gun-shot wound inflicted by himself. It is not contended, however, by plaintiff that said self-destruction was the result of accident."

The language of the policy is (Trans., p. 14): —

> "Or in case of the *self-destruction* of the holder of this policy, whether voluntary or involuntary, sane or insane, * * * then in each and every of the foregoing cases, this policy shall become null and void, and the widow and heirs or devisee of said member shall have no claim for benefits on this company, provided that in case of the *suicide* of the holder of this policy, then this company will pay to his widow or heirs or devisees such an amount on this policy as the member shall have paid to this company on on this policy in assessments on the same without interest."

Now, if the word "self-destruction," is equivalent to the word "suicide," and it must have been used in that sense, because the next clause is the proviso that in case of the "*suicide*" of the holder of the policy the company will only pay the beneficiary named in the policy the amount paid by the policy-holder in assessments, the construction of the clause in question must be that in case the member shall "*commit suicide*," voluntary or involuntary,

sane or insane, his beneficiary shall only be entitled to the amount paid in assessments. There can be no such thing in law as insane, or involuntary suicide, because, under the authorities cited by petitioner, suicide implies an intent, and courts have often commented on this absurd contradiction in terms.

Haynie *v.* Knights Templars &c., 139 Mo. 416–432;
Adkins *v.* Columbia Life Ins. Co., 70 Mo. 27–32.

2. *Jarman died from disease.* True, the language of the seventh paragraph of the agreed statement of facts is contradictory. The counsel who prepared the case on the part of petitioner, knowing that the first sentence of the seventh paragraph would effectually eliminate the question of suicide from the case, inserted the second clause to the effect that it was not contended that the said self-destruction was the result of accident. If a man while delirious from typhoid fever throws himself from a window and is killed, it cannot be said to be an accident, nor on the other hand is it suicide, but it is the result of disease.

Suppose Jarman had undertaken an ocean voyage in an unseaworthy vessel which would and did founder in a storm, it would not be strictly an accident, nor would it be suicide. If Jarman while out walking on a dark night had come in contact with a live electric wire and was killed, or if in absolute darkness leaned against the railing of a high bridge, and it gave way and he was precipitated to the rocks below and was killed, it would not be suicide. How is it suicide, or self-destruction, voluntary or involuntary if Jarman when insane to such an extent that he could not understand the *nature* or *consequences* of his act, or form an intent to take his own life even though the intent of a disordered mind, did die because of a pistol shot

inflicted by himself? It was no more a case of self-destruction than would be that of a child who exposes itself to the inclemency of the weather, catches cold and dies of pneumonia. Or if a man in public or business life overworks and keeps late hours so that he has nervous prostration or Bright's disease from which he dies as the direct result of his own imprudence, or an inveterate smoker who contracts heart disease as the result of his own act in the excessive use of tobacco, and should die of it, could be said to be guilty of self-destruction.

Upon reason and authority we contend that the death of Jarman was not caused by any act of self-destruction, voluntary or involuntary, sane or insane, not even strictly speaking was it by accident, but his death was the consequence of disease which caused such an impairment of the faculties that he died as a direct result of the disease, as much as a typhoid fever patient who, in delirium, perhaps to escape an imaginary enemy, plunges from a window and is killed, dies from disease.

3. *Under the authorities Jarman's act could not have been suicide.*

We have already referred to the case of

Bigelow *v.* Insurance Co., 93 U. S. 284,

and, in addition to the extracts heretofore given, it seems that the following words of the court have a peculiar significance under the facts of this case. In this case (93 U. S. 284–287) the court said: —

> "In the popular, as well as the legal sense, suicide means, as we have seen, the death of a party by his

own voluntary act; and this condition based, as it is, on the construction of this language, informed the holder of the policy, that, if he purposely destroyed his own life, the company would be relieved from liability. It is unnecessary to discuss the various phases of insanity, in order to determine whether a state of circumstances might not possibly arise which would defeat the condition. It will be time to decide that question when such a case is presented. For the purposes of this suit, it is enough to say that the policy was rendered void, *if the insured was conscious of the physical nature of his act, and intended by it to cause his death, although, at the time, he was incapable of judging between right and wrong, and of understanding the moral consequences of what he was doing.*"

To this effect is John Hancock Life Ins. Co. *v.* Moore, 34 Mich. 42.

In this case there is no conflicting evidence so as to leave the true facts in doubt, but it is admitted that the death of Jarman was caused by a gunshot wound, *inflicted by himself while insane to such an extent as to be incapable of understanding the nature and consequences of his act.*

This is a very different situation from that revealed by the facts in the case of Bigelow *v.* Insurance Co., and we take it, presents a state of circumstances such as is referred to by the court in that case. There the court suggests that there might a state of circumstances arise which would defeat the condition of suicide, sane or insane, but, referring to Bigelow's act, the court said: —

"Bigelow knew that he was taking his own life and showed sufficient intelligence to employ a loaded pistol to accomplish his purpose; but he was unconscious of the great crime he was committing. His darkened mind did not enable him to see and appreciate the moral character of his act, but still left him capable enough to understand its physical nature and consequences."

In this case it is conceded that Jarman *did not know* either the nature, moral or physical, or the consequences, moral or physical, of what he was doing. Therefore it follows that the condition of the policy in regard to self-destruction, voluntary or involuntary, sane or insane, does not apply.

It must be remembered, as is conceded in all the cases involving questions of life insurance, that the words of an insurance policy are to be strictly construed against the insurer and liberally construed in favor of the insured.

It is an absurd expression to speak of involuntary suicide. As well might we refer to involuntary theft or murder. If a somnambulist should while asleep shoot a man it would not be homicide, nor, if, while dreaming that he was attacked by robbers, he should reach for a pistol to defend himself, and kill himself in that way, would it be involuntary suicide?

We repeat, therefore, that the act of Jarman, under the agreed statement of facts, shows that his death was the result of disease, and did not come within the suicide condition of the policy.

2. *The authorities support this view.*

In the case of

> Blackstone *v.* Standard Life & Accident Ins. Co., 74 Mich. 592; 42 N. W. R. 156,

the court says in conclusion,

> "We think where one is so far beside himself, his intellect so darkened and obscured that he may be neither morally or legally responsible for his own acts and conduct, and in such condition produces his own death, it cannot be any more said to be his act than though

the act had been committed by another, or the insured had placed himself upon some dangerous height and fallen involuntarily and been dashed to pieces."

It is also held that it is not suicide if the insured did not have the intent to do the act or realize the physical consequences of his act.

Pierce *v.* Travelers Ins. Co., 34 Wis. 389.

To the same effect is the recent case of

Grand Lodge *v.* Wieting, 168 Ill. 408; 48 N. E. R .59,

where the court says: —

"It is believed there is a substantial concurrence of judicial decision in America on the proposition that if, at the time of the suicidal act, the assured was so affected with insanity as to be unconscious of the act or of the physical effect thereof, or was driven to its commission by an insane impulse, which he had not the power to resist, the act of self-destruction is regarded *as though it was the result of accident or of some irresistible external force*, and the proviso of a policy framed as the one at bar, or where other phrases denoting self-destruction are used, will not attach, but the insurer will be held liable. There is much conflict of opinion and authority as to the effect of the condition or proviso of the policy when insanity has so far overcome the consciousness of the assured that he was unable to appreciate the moral wrong involved in the act of taking his own life, though he had mind enough to intend the act, and was aware of its physical effect."

To the same effect are

Esterbrook *v.* Insurance Co., 54 Maine, 224;
Streeter *v.* Society, 65 Mich. 199; 31 N. W. R. 779.

VI.

The amendment to the by-laws, or constitution of the company cutting off the payment in addition to the face amount of the policy, of the assessments, which had been paid by the insured, was not retrospective and did not affect Jarman's policy.

The agreement of the member to abide by the constitution, "as it now is or may be constitutionally changed hereafter," does not enable the association to bind him by subsequent changes of the constitution reducing the amount stipulated to be paid under the policy.

1. *The contract is not made by the by-laws, but by the policy.* This contract is *not* made up of the charter, constitution and by-laws of the company, because the agreement is to pay a fixed amount and under the eighth paragraph of the policy it is agreed that only the constitution or by-laws, printed on the back of the policy, shall form a part of it. *The claim does not arise under the by-laws, but under the policy.*

Under section 1 of article 4 of this constitution, which was never changed, it was provided, that when a member was accepted a *policy* should be issued to him, stating the terms and conditions of the contract and which, the law says, "*shall constitute the basis of settlement with the beneficiaries.*"

We contend, therefore, that, under the provisions of the constitution and the by-laws themselves, both as originally existing and also as amended (for it must be admitted that the contract is to be strictly construed against the company), the *policy* as issued was to fix the amount to be paid.

2. *The contract is one of life insurance and cannot be modified except by the consent of both parties.* The contract in question is one of life insurance and the contract sued on is a policy. The nature of this company was clearly established by the opinion of Judge Caldwell in the case of Berry *v.* Knight Templars, etc., 46 Fed. Rep. 439; where this organization was held to be a regular life insurance company and its contracts ordinary life insurance policies.

Commonwealth *v.* Wetherbee, 105 Mass. 149;
National Union *v.* Marlow, 4 U. S. App. 95; 74 Fed. Rep. 775.

If this be true the contract cannot be modified by one contracting party without the consent of the other.

It must be remembered that what is here called the constitution is not the charter, but is simply a code of by-laws under an inappropriate name.

Supreme Lodge *v.* Knight, 117 Ind. 489; 20 N. E. R. 483;
Mulroy *v.* Knights of Honor, 28 Mo. App. 463.

Because the by-laws at the time of the issue of the policy provided that the *policy* should constitute the *basis of settlement* with beneficiaries, the *policy* itself must determine the amount to be recovered.

3. *The amendments to the by-laws did not affect this policy because they do not purport to have any retrospective operation.* The amendments to the by-laws did not in any way affect this contract, *nor did they purport to do so.* The new by-laws, as well as the old, declare that *the policy* shall determine the rights of the beneficiaries, and under

all rules of construction the proposed amendments only apply to contracts thereafter made.

The promise in the policy (Trans., p. 14) is to pay on Jarman's death

> "the sum of $5,000 and all the money paid on the policy in assessments subject to the limitation as to the amount of such payment as is provided in Sec. 1 of Art. 7 of the constitution on the back of this policy."

Sec. 1 of Art. 7 above referred to simply provides (Trans., p. 29): —

> "Sec. 1. Upon due notice and satisfactory proof of the death of a member of this company the board of directors shall within sixty days pay the widow, children or heirs of the deceased member (in the order named unless otherwise ordered by the member during his lifetime, or in his will) the amount set forth in the deceased member's policy of membership.
>
> Provided that a policy of membership for $5,000 shall be good for all the money in the death fund arising from one assessment, provided it shall not exceed $5,000, and all the money paid on the policy in assessments. And a certificate for $4,000 shall be good for four-fifths of all the money in the death fund arising from one assessment, provided it shall not exceed $4,000 and all the money paid on the policy in assessments; and so on in the same proportion as to all certificates."

The last amendment of February 20th, 1894, was by striking out all of the proviso. This then left the law as amended to only consist of the first paragraph, that upon due notice and proofs of death the company should pay the beneficiaries in the policy "the amount set forth in the deceased member's policy of membership."

Certainly there is nothing here to indicate in the least any intent on the part of the company to affect the policy The direction is that the directors shall pay to the insured the amount specified in the policy, and it was and is agreed under section 1 of art. 4 of the constitution (Trans., p. 24), that the policy

> "Shall constitute the basis of settlement with the beneficiaries."

We contend, therefore, that under the provisions of the constitution and the by-laws themselves, both as originally existing and also as amended, the policy as issued must fix the amount to be paid.

It is only necessary upon this point to cite a few authorities.

In the case of

Carnes *v.* Iowa Traveling Men's Association, 106 Iowa, 281: 76 N. W. R. 683,

the court said: —

> "Nothing in it (the constitution) authorized the association to amend, and thereby bind a member to any change in the contract without his assent, nor do the amended articles purport to change existing contracts or to authorize any such change by the adoption of by-laws. In the absence of such provisions, the articles and by-laws as amended cannot be treated as retrospective in their operation. Mere silence as to the effect of revision and amendment of the constitution and by-laws will not warrant the inference that any change wrought will limit or extend the obligation heretofore created by the issuance of certificates of membership. Statutes are construed so as to give them a prospective operation, unless the intention that

they operate retrospectively is clear and undoubted, and it is not perceived why the same canon of construction should not be applied to the rules adopted by a mutual insurance association for the transaction of its business and the government of its members."

The same principle is laid down in

Spencer *v.* Grand Lodge, 22 Misc. 147; 48 N. Y. Supp. 590; affirmed 65 N. Y. Supp. 1146;
Grand Lodge, etc., *v.* Stumpf, 24 Tex. Civ. App. 309; 58 S. W. R. 840;
Hobbs *v.* Association, 82 Iowa, 107; 47 N. W. R. 983;
Sieverts *v.* Association, 95 Iowa, 710; 64 N. W. R. 671;
Benton *v.* Brotherhood, 146 Ill. 590; 34 N. E. R. 939.

5. *The company had no power to alter the contract by amendments to its constitution or by-laws.* Even if we concede that the company did intend by the amendments to reduce the amount paid on existing policies, it had no power to make any such change and the amendments, so far as existing policies are concerned, are inoperative, unreasonable and void.

In Hobbs *v.* Iowa Benefit Association, 82 Iowa, 107; 47 N. W. R. 983, the court said: —

"The corporation has no capacity, as a legislative power from which it derived existence has no competency, by-laws of its own enactment to disturb or divest rights which had created, or to impair the obligation of its contracts, or to change its responsibilities to its members, or to draw them into new and distinct relations."

In the recent case of Pokrefky *v.* Detroit &c. Assn., 121 Mich. 456; 80 N. W. R. 240, the Supreme Court of Michigan said: —

> "The by-laws as they existed at the time he became a member constituted a part of the contract. If the trustees had the power to limit the amount of payment to be made at $1,500, they could limit it to a much lesser amount. The act under which the company was organized permitted the trustees to change the by-laws at pleasure; but it cannot be said that this was intended to place it within the power of the trustees to adopt by-laws that would have a retrospective operation upon the contracts of the company made before new by-laws were adopted. While the trustees undoubtedly had the power to pass or change by-laws necessary for the well government of the affairs of the company, it cannot be said that it was intended to clothe them with the arbitrary power to reduce the amount due beneficiaries under contracts made before new by-laws were passed. The same question was presented in Insurance Co. *v.* Connor, 17 Pa. St. 136, and it was there held that the by-laws could have no retrospective effect."

In the case of Voight *v.* Kersten, 164 Ill. 314; 45 N. E. R. 543, the Supreme Court of Illinois held that the right to designate a beneficiary which was unlimited at the time the certificate was issued, could not be taken away by a subsequent act of the legislature. If the legislature could not take away the right to designate a beneficiary, much less can the directors of this company take away part of the amount promised its policy holders.

In the case of Startling *v.* Supreme Council, 108 Mich. 140; 66 N. W. R. 340, above cited, the court says: —

> "It is claimed by way of defense that in 1890, and before this suit was brought, the causes of total dis-

ability were reduced to three: (1) Entire and incurable loss of vision; (2) entire loss of both arms, or both legs; (3) hopeless and incurable insanity; and that, inasmuch as the plaintiff had agreed to observe the rules and regulations of the order, this change of causes of total disability would prevent his recovery for the total disability growing out of the paralysis. It has been held that where a mutual benefit society issued to a member a certificate of insurance, the subsequent adoption of a by-law by the society could not modify or change the contract of insurance without the express consent of the member. Grand Lodge *v.* Sater, 44 Mo. App. 445; Insurance Co. *v.* Conner, 17 Pa. St. 163; Becker *v.* Society, 144 Pa. St. 232; 22 Atl. 699; Morrison *v.* Insurance Co., 59 Wis. 162; 18 N. W. R. 13."

In the case of Hale *v.* Equitable Aid Union, 168 Pa. 377; 31 Atl. 1066, the court says in a case much like the one at bar: —

"The benefit certificate was accepted by plaintiff subject to the right of the corporation to amend its by-laws, and to change the contract in so far as the by-laws make it, but not in so far as the contract is made by the certificate itself."

In an action on a similar certificate in New York, the Supreme Court of that State says (Weiler *v.* Equitable Aid Union, 36 N. Y. Supp. 734; 92 Hun, 277): —

"Here the object and purpose of the corporation, as appears from the finding of fact, were, among other things, to do a life insurance business upon the assessment plan, and give certificates payable in manner and form as that given to plaintiff. The by-law in question strikes down these certificates, and to that extent changes the object and purposes of the corporation. The right of plaintiff to payment upon the contingency

named in the certificate was in the nature of a vested right. Goodman *v.* Lodge, 67 Md. 117, 127; 9 Atl. 13, and 13 Atl. 627; Bac. on Ben. Soc. 289; 1 Moore Priv. Corp. 496. The plaintiff had the right to believe that the defendant would not, by by-laws, assume to change, as to him, the objects and purposes of the corporation upon the basis of which he had made his contract and for ten years and upwards had performed upon his part. As to plaintiff, the new by-law was simply repudiation of a positive contract."

The leading case in Missouri is that of Hysinger *v.* Supreme Lodge, etc., 42 Mo. App. 635; in which case the rule is laid down by the court, as contained in an extract from Niblack on Benefit Societies, as follows: —

"But when the provision of the charter or a by-law of the society constitutes a part of the contract of insurance, its alteration without the consent of the member cannot affect the contract."

In support of this doctrine the court cites a number of authorities, including Morrison *v.* Wisconsin, etc., Co., 59 Wis. 162, a case exactly in point, which it is not necessary to more than refer to here.

In Grand Lodge *v.* Sater, 46 Mo. App. 452, the court has said: —

"As to other amendments of the constitution and by-laws, Sater was bound, but not so as to changes directly affecting his contract of insurance. An insurance contract such as we have here is as sacred as any other contract, and it cannot be modified or changed by the society except by the express consent of the member."

In Smith *v.* Supreme Lodge, Knights of Pythias, 83 Mo. App. 512–526, the court says: —

"The fact that it (the association), reserved the right, by the assent of the member, to make future laws obligatory upon him, could not justly be deemed to comprehend the right to abate its debt, for that would *pro tanto* destroy the contract between the parties and to permit one person to accept the consideration of a debt and subsequently to deny a material part or all of such debt, would authorize a patent fraud, which the law does not deem to have been within the intent of a mere general agreement for changes in the contract. Such an agreement only contemplates those changes which fairly consist with the full obligation entered into. It does not imply that the obligation itself should be lessened or destroyed at the will or caprice of the obligor, for that would involve injustice to one and ill design on the part of the other of two parties to a contract. The law does not seek to compass an injury; neither does it impute an intent to defraud in advance of proof. In associations like the present, which are professedly formed to provide a sum certain to a designated recipient, the parties are not to be understood as intending by an agreement on the part of the assured to obey future laws, that the indemnity specified shall be materially impaired or destroyed, after full consideration paid, under the operation of a subsequent by-law, which, like the one under review, provides for a forfeiture of material rights upon an event which the member, according to this record, could not avoid — death by self-destruction when insane. Of course, such a clause, if it had been inserted in the original contract, might have been available in some jurisdictions, not to defendant, however, in contracts made in this State. Toomey *v.* Supreme Lodge K. of P., 147 Mo. 129; same case, 74 Mo. App. 507. That would present a very different question from the one before us. What we have to deal with is, not the enforceability of such a clause if embraced in the original agreement between the parties (as in the Toomey case, *supra*), but its injection into their contract per force of an agreement to abide by further by-laws.

> If it is thus read into the contract between the parties it necessarily affects its substance and the intent of the right to recover thereon, and is therefore a material alteration of an agreement fairly entered into and upon a full consideration. We cannot infer that this was the result had in view when the contract was made as shown in this record, nor do we think it would be a reasonable exercise for the right reserved to the order to make by-laws for the future governance of its members, to enact one which in effect took away about one-half of the sum it had agreed to pay him, after having received the consideration for the indemnity for 18 years."

A number of cases have been lately decided, involving the right of a society to make arbitrary changes in its by-laws, one of which is

> Langan *v.* American Legion of Honor, 34 Misc. R. 629; 70 New York Supp. 663,

in which the court says: —

> "The agreement by the plaintiff in the application for membership and in the benefit certificate, to comply with all the laws that might thereafter be adopted, as well as the power reserved in the by-laws to change them, had reference to changes which should not impair the substance of the contract. Nothing beyond this will be implied on the theory that it is reasonable. The amended by-law of 1900 abrogates the contract to pay $5,000 and substitutes an obligation to pay only $2,000, and is therefore void. Some opinions of Judges seem to say (strangely enough, as it would seem) that a by-law changing the contract, where no such power was reserved, is unreasonable and therefore void. I do not understand it to be a question of reasonableness at all, but of power. If the power sought to be exercised to change the contract was not reserved, its exercise cannot be called reasonable."

And the Supreme Court of Massachusetts, in a case involving the same facts and against the same defendant, has recently said: —

Newhall *v.* Supreme Council American Legion of Honor, 63 N. E. Rep. 1,

> "But the plaintiff's rights do not stand upon the by-laws alone. They stand also upon express contract. The promise to pay five thousand dollars is conditioned by the by-laws only to the extent that has been stated. Even if the 'full compliance with all the by-laws,' which is mentioned as a consideration for the promise, is not interpreted and limited by the more specific provisions of the express conditions, 'compliance' in this connection means doing what the by-laws may require the member to do, not submission to seeing his only inducement to do it destroyed. The case is not like Daley *v.* Association, 172 Mass. 533, 52 N. E. 1090, and Moore *v.* Association, 103 Iowa, 424, 72 N. W. 645, where the promise to pay a fixed sum was qualified by reference to a fund from which the payment was to come and which might turn out inadequate from causes over which the defendant had no control."

Two other cases involving practically the same facts and where the same conclusion was reached, are

Supreme Council, etc., *v.* Getz (U. S. C. C. A.), 112 Fed. Rep. 119; and
Gaut *v.* Supreme Council, etc. (Tenn.), 64 S. W. Rep. 1070.

These views are also supported by the recent case of

Peterson *v.* Gibson, 191 Ill. 365; 61 N. E. Rep. 127.

The same principle has also been laid down by the Supreme Court of North Carolina in two cases which differ as to their facts, yet involve the same principle: —

Bragaw *v.* Supreme Lodge, 128 N. C. 354; 38 S. E. Rep. 905;

Strauss *v.* Mutual Reserve Fund Life Assn., 128 N. C. 465; 39 S. E. Rep. 55.

The cases of

Wist *v.* Grand Lodge, 22 Oregon, 271; 29 Pac. Rep. 610;

Deuble *v.* Grand Lodge, etc., 66 App. Div. 323; 72 N. Y. Supp. 755,

are also in point.

4. *The cases cited by counsel for petitioner as to after-enacted laws relate only to conduct of member and have no application here.* Numerous cases are cited by counsel for petitioner to the effect that where a certificate is issued by a mutual benefit society, wherein the member agrees that such certificate is issued subject to laws then in force or thereafter adopted, he is bound by changes in the by-laws. These cases relate without exception to the amount of assessments to be paid by the member, or to his conduct, or to the amount of sick benefits. None of them hold that an essential element of a contract affecting substantially the rights of a member can be changed without his consent. All the cases cited by counsel can be distinguished from the one at bar because the facts are different. There is no such agreement in this case because the language of the application is simply that the member will *abide* by the constitution, rules and regulations. The stipulation applies only to the conduct of the member, something to be done by him, as for example his residence,

occupation or payment of assessments. Then again it must be read in connection with section 1, article 4, of the constitution, which provides that *the policy shall constitute the basis of settlement*. Again in section 1 of article 7, it is provided that the Board of Directors *shall pay to the beneficiaries the amount set forth in the deceased member's policy of membership*.

5. *It makes no difference that this is a so-called mutual company*. Counsel for petitioner devote considerable time to the argument that, because this is a mutual company, the policy holders and not the directors, really made the change, and that the change is a reasonable one. In the first place the modern life insurance companies, whether doing business on the assessment plan or the regular, or old line, fixed premium plan, are all mutual life insurance companies, but the court will take judicial notice of the fact that these companies are managed by directors who really govern the corporation, although it sometimes occurs that the management take the precaution to obtain a proxy at the time the policy is issued which commits the member to whatever they do.

The company in question is a regular insurance corporation, managed by directors, but neither the directors, nor the policy holders, have any right to alter the contract of the company with a member without the consent of the other party to it.

The question as to the reasonableness of the change is immaterial. As the Supreme Court of Tennessee said: —

Gaut *v.* Supreme Council, etc., 64 S. W. Rep. 1070,

> "The motives which led to the adoption of this by-law are wholly immaterial, nor is the reasonable-

ness of the by-law a factor in the decision of the case. As we view the record it presents simply a question of power on the part of the association, and, being of the opinion that the passage of the law was *ultra vires* other considerations are immaterial."

For the foregoing reasons we ask that the judgment of the Circuit Court of Appeals be affirmed.

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